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Filing date: **10/18/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Nirvana, Inc.		
Entity	Corporation	Citizenship	New York
Address	1 Nirvana Plaza Forestport, NY 13338 UNITED STATES		

Attorney information	Harris A. Wolin Myers Wolin, LLC 100 Headquarters Plaza North Tower, 6th Floor Morristown, NJ 07960 UNITED STATES tm@myerswolin.com Phone:973-401-7157
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Registration Subject to Cancellation

Registration No	2731312	Registration date	07/01/2003
Registrant	NIRVANA FOR HEALTH INC. 40 CENTRAL PARK SOUTH New York, NY 10019 UNITED STATES		

Goods/Services Subject to Cancellation

Class 032. First Use: 1970/08/14 First Use In Commerce: 1990/08/14 All goods and services in the class are cancelled, namely: Bottled natural spring mineral water

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	nvna_3775_20121018_2731312_nirvana_for_health_pet_for_cancellation_with_exhibits.pdf (23 pages)(734657 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Harris A. Wolin/
Name	Harris A. Wolin
Date	10/18/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2,731,312
Mark: NIRVANA
Registered: July 1, 2003

Nirvana, Inc.,)	
)	
Petitioner,)	Petition for Cancellation _____
)	
– against –)	Cancellation No. _____
)	
Nirvana for Health Inc.,)	U.S. Reg. No. 2,731,312
)	
Registrant.)	
)	Filed electronically via ESTTA

Hon. Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451
Box TTAB: Fee

PETITION FOR CANCELLATION

Nirvana, Inc., (hereinafter “Petitioner”) a corporation organized under the laws of New York, having its principal place of business at 1 Nirvana Plaza, Forestport, New York 13338, believes that it will be damaged by the continued registration of the trademark shown in U.S. Reg. No. 2,731,312 for the mark NIRVANA for “Bottled natural spring mineral water,” currently owned to the best of Petitioner’s knowledge by Nirvana for Health Inc., (hereinafter “Registrant”) currently believed to reside at 40 Central Park South, New York, NY 10019, and therefore petitions to cancel it.

As grounds for its petition, Petitioner, by its attorneys, MYERS WOLIN, LLC
alleges as follows:

1. On July 30, 2012, Petitioner filed an application in the United States Trademark Office, Serial Number 85/690,835 (hereinafter “Petitioner’s Application”), for the mark NIRVANA for use on or in connection with “Drinking water; Spring water” in International Class 32.

2. On October 1, 2003, Registrant filed an application based on use in commerce in the United States since as early as August 14, 1970, for the mark NIRVANA, Ser. No. 76/319,172, for “Bottled natural spring mineral water” in International Class 32. A registration for the mark issued on July 1, 2003, and was assigned Reg. No. 2,731,312 (hereinafter “Registrant’s Mark”).

3. The mark shown in Registration No. 2,731,312 and Petitioner’s Mark are identical. The continued registration of Registrant’s Mark will harm Petitioner as it will block registration of its own mark.

4. Upon information and belief, Registrant’s Mark has become abandoned due to nonuse of said mark with respect to the goods in the registration.

CLAIM I

5. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 4 as if fully set forth herein.

6. Upon information and belief, Petitioner believes that the Registrant is currently no longer in business and has not been in business since 2010 at the latest as evidenced by a NYS Department of State corporate record for the Registrant downloaded from the NYS Department of State Division of Corporations on July 27, 2012, and attached as Exhibit A.

7. The attached record evidences a New York corporation incorporated on June 14, 2001 and dissolved by proclamation or annulment of authority on July 28, 2010.

8. Upon information and belief, Petitioner believes that Registrant is no longer in business as Registrant no longer maintains a business at the listed address of 40 Central Park South, New York, NY 10019, as evidenced by a letter sent to Registrant and returned as undeliverable in a previous matter, attached as Exhibit B.

9. The attached record evidences a letter mailed by the United States Patent and Trademark Office to Registrant in relation to Cancellation No. 92042878. The letter was returned as undeliverable at the address listed for Registrant, and was entered into the prosecution history for the specified cancellation action as such on March 11, 2010.

10. Upon information and belief, Petitioner believes that Registrant is no longer in business as evidenced by an article from The New York Times describing Nirvana as “a restaurant that was on Central Park South from the 1970s to 2002,” attached as Exhibit C.

11. The attached record evidences an article published in The New York Times on January 4, 2011 titled “From Realm of the Stars to Half a Room” about the former owner of Nirvana for Health and identifying the same as an “ex-restaurant owner.”

12. Upon information and belief, Petitioner believes that Registrant is no longer in business as evidenced by a restaurant review published at the website www.gayot.com regarding the Nirvana restaurant indicating that “THIS RESTAURANT IS CLOSED,” attached as Exhibit D.

CLAIM II

13. Petitioner repeats and realleges each and every allegation contained in paragraphs 1 through 12 as if fully set forth herein.

14. Upon information and belief, Registrant is no longer using its trademark in commerce, as evidenced at least by its dissolution in 2010.

15. Petitioner has been unable to find actual use of the Registrant's Mark in commerce in at least the past three years.

16. Upon information and belief, Registrant is no longer using the Registrant's Mark in commerce and has abandoned the same with respect to the goods shown in its Registration No. 2,731,312.

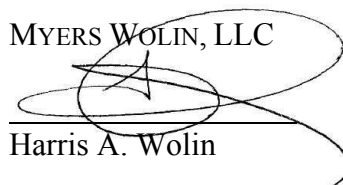
17. By reason of the foregoing, Registrant's mark is subject to cancellation pursuant to 15 U.S.C. § 1064(3).

WHEREFORE, Petitioner respectfully requests that this petition be sustained and that Registration No. 2,731,312 for the mark NIRVANA be cancelled.

Any fee due with this paper, including the Petition for Cancellation fee of \$300, not already paid through an ESTTA filing, may be charged to Deposit Account No. 50-3894. Any overpayment may be credited to Deposit Account No. 50-3894.

Respectfully submitted,

MYERS WOLIN, LLC

A handwritten signature in black ink, appearing to read 'Harris A. Wolin', is written over a horizontal line. The signature is stylized with loops and a large 'H'.

Harris A. Wolin

Myers Wolin, LLC
100 Headquarters Plaza
North Tower, 6th Floor
Morristown NJ 07960-6834
Phone: (973) 401-7159
Fax: (866) 864-3947
Email: tm@myerswolin.com
Attorneys for Petitioner

Dated: October 18, 2012
Morristown, New Jersey

Attached: Certificate of Service
Exhibits A-D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2,731,312

Mark: NIRVANA

Registered: July 1, 2003

Nirvana, Inc.,)	
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Petitioner,)	Petition for Cancellation _____
)	
– against –)	Cancellation No. _____
)	
Nirvana for Health Inc.,)	U.S. Reg. No. 2,731,312
)	
Registrant.)	
)	Filed electronically via ESTTA

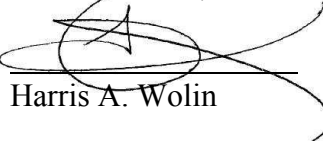
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITION FOR CANCELLATION has been served on Nirvana for Health Inc. by mailing said copy on October 18, 2012, via Federal Express, to:

Shamsher Wadud
144-61 38th Ave.
Long Island Care Center
Flushing, NY 11354

Respectfully submitted,

MYERS WOLIN, LLC



Harris A. Wolin

100 Headquarters Plaza
North Tower, 6th Floor
Morristown NJ 07960-6834
Phone: (973) 401-7159
Fax: (866) 864-3947
Email: tm@myerswolin.com
Attorneys for Petitioner

EXHIBIT A

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through July 27, 2012.

Selected Entity Name: NIRVANA FOR HEALTH INC.

Selected Entity Status Information

Current Entity Name: NIRVANA FOR HEALTH INC.

DOS ID #: 2650434

Initial DOS Filing Date: JUNE 14, 2001

County: NEW YORK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: INACTIVE - Dissolution by Proclamation / Annulment of Authority (Jul 28, 2010)

Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at www.tax.ny.gov keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at (518) 485-6027

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O SHAMSHER WADUD
40 CENTRAL PARK SOUTH, STE. 2A
NEW YORK, NEW YORK, 10019

Chairman or Chief Executive Officer

SHAMSHER WADUD
40 CENTRAL PARK SOUTH
2A
NEW YORK, NEW YORK, 10019-1633

Principal Executive Office

NIRVANA FOR HEALTH INC.
40 CENTRAL PARK SOUTH
2A
NEW YORK, NEW YORK, 10019-1633

Registered Agent

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate.](#)

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 14, 2001	Actual	NIRVANA FOR HEALTH INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT B

TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: March 1, 2010

Cancellation No. 92042878

NIRVANA, INC.

v.

NIRVANA FOR HEALTH, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

This proceeding commenced on January 15, 2004. As the record reflects, petitioner has been generous with consented periods of extension; and the Board has been generous by granting respondent further periods of extension and suspension due to representation matters and the chronic illness of respondent's president. Since October 2007, respondent has been representing itself through its president.

In accordance with the last scheduling order, dated March 5, 2009, the testimony periods closed on September 18, 2009. It does not appear that respondent submitted any evidence.¹ Petitioner filed its main brief on November 17, 2009. Respondent's main brief was due December 17, 2009. Respondent did not file a main brief and this case was submitted on brief (i.e., docketed for final decision) on January 19, 2010.²

¹ The Board notes in passing that respondent, as the defendant, was not required to submit evidence.

² As with evidence, a defendant is not required to submit a main brief for final decision.



03-11-2010

This case now comes up on respondent's motion, filed January 25, 2010 (and dated January 19, 2010), to reopen its time to file its main brief.³ Petitioner filed a response thereto.

In support of its motion, respondent indicates that its president has been hospitalized several times in the past year for a chronic illness and for other medically urgent matters.

In response, petitioner argues that respondent's trial brief was due December 17, 2009 and that respondent did not file its brief or file a motion for an extension of time prior to the due date. Petitioner states that respondent, on December 9, 2009, asked petitioner for an extension but petitioner informed respondent it would not consent to the requested extension. Petitioner also notes that respondent did not serve a copy of its January 25, 2010 request on petitioner. Petitioner, stating that it has empathy for the circumstances faced by respondent's president, points out that numerous extensions have been granted in the past due to the ongoing illness of respondent's president; that respondent's documentation does not show a hospitalization of its president just prior to respondent's deadline; that the activity of respondent's president in a federal district court case on an unrelated matter contradicts the stated inability of respondent to participate in this cancellation proceeding by filing its main brief; and that respondent was advised by the Board on August 22, 2008 to enlist

³ Respondent titled the motion as one to extend its time "to answer petitioners (sic) TRIAL BRIEF."

other help and not rely solely on the ability of its president to respond to matters in this case. Petitioner expresses its belief that, based on past history, respondent will continue to delay this proceeding, which is concluded except for the final decision, by seeking more periods of extension.

As a preliminary matter, because respondent's motion was filed after the time for it to file its main brief had expired, it is a motion to reopen the relevant briefing periods. See Fed. R. Civ. P. 6(b)(1)(B).

Pursuant to Fed. R. Civ. P. 6(b)(1)(B), the requisite showing for reopening an expired period is that of excusable neglect. In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993), the Supreme Court set forth four factors to be considered, within the context of all the relevant circumstances, to determine whether a party's neglect of a matter is excusable. Those factors are: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and, (4) whether the moving party has acted in good faith. In subsequent applications of this test by the Circuit Courts of Appeal, several courts have stated that the third factor must be considered the most important factor in a particular case. See *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 at fn.7 (TTAB 1997).

The Board notes that respondent, in its motion, did not indicate a period of time in which it intended to file its main brief, if an enlargement of time were to be granted. The Board also notes that at this point, the respondent has had more than two months since its main brief was due in which to submit such brief notwithstanding the pendency of its motion to reopen. This amount of time is in addition to the normal time set for filing the main brief, which is 30 days after the due date of petitioner's main brief. In view of respondent's past history, it is unclear when respondent would file its main brief. See for example the Board's August 22, 2008 order.

Thus, applying the *Pioneer* factors to this case, at this point in the proceeding, significant prejudice to petitioner has accrued to petitioner and will exist should the Board reopen respondent's briefing time. In addition, the delay to this proceeding is substantial, particularly in view of the opportunity respondent has already had to file its main brief and the open-ended request for additional time that has been filed. There is, however, no direct evidence that respondent is acting in bad faith, even though the documentation submitted by respondent shows the hospitalizations of its president occurred after the original due date for the brief.

However, with respect to the third *Pioneer* factor, i.e. the reason for the delay and whether it was within respondent's control, respondent has not shown that the reason for the delay was outside

its reasonable control. Respondent clearly was aware for several years of the deteriorating medical condition of its president, as well as his chronic illness. As indicated earlier, the Board was previously generous with periods of suspension and extension while respondent's president was coping with his personal issues and attempting to retain new counsel. And as observed by petitioner, in its August 22, 2008 order (approximately eighteen months ago), the Board advised respondent as follows:

More that sufficient time has passed for respondent to take care of this matter, even accounting for the health problems and related hospitalizations of its president. Respondent needs to enlist other help [] and not rely solely on the ability of its president []. [Respondent] risks entry of judgment because the Board is unlikely to grant further extension requests.

After careful consideration of the *Pioneer* factors and the relevant circumstances presented in this case, the Board finds that respondent has failed to establish excusable neglect so as to warrant a reopening of its time to file its main brief. Although the fourth *Pioneer* factor does not weigh against respondent, the remaining factors do so heavily.

Accordingly, respondent's motion to reopen the time to file its main brief is denied. This case is being forwarded for docketing for a final decision.

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ABOUT NEW YORK

From Realm of the Stars to Half a Room

By JAMES BARRON
Published: January 4, 2011

Pull back the curtain that runs down the middle of the room and look at the clutter by the window: two computer printers that double as fax machines, papers strewn on the bed. But there is also what you can't see: the occupant's memories of the night he opened a restaurant and [George Harrison](#) came in; the time Keith Richards showed up for dinner, unannounced, with 12 people in tow; the visit from [Dan Aykroyd](#) and his wife, Donna Dixon, both hungry. Very hungry. The bill came to \$600.51.

This tiny half-room in a nursing home in Queens is where Shamsher Wadud has lived for almost a year as a [Medicaid](#) patient. When he was a restaurateur in Manhattan with an apartment on Central Park South, people noticed how well he dressed. Now his tiny hospital gown billows around him as he shuffles along, his hands tight on his walker.

That was a different life.

"It is beyond the imagination how I can go from there to here," he said. "It is unbelievable how a landlord and a condo board" His voice, already quiet, trailed off.

Yes, as in so many New York stories, real estate figures in this one. But so do the celebrities, the parties, the Rolls-Royces waiting at the curb and, when the disco beat was pulsing, the dancing under some of the world's most famous glittering balls.

Mr. Wadud, 66, owned Nirvana, a restaurant that was on Central Park South from the 1970s to 2002, when a wall collapsed.

He said the disaster struck just as the building was being converted to condominiums. He had already put down a total of \$3 million — "my whole life's savings" — as a partial payment on the penthouse space the restaurant occupied. He missed a deadline for the rest of the purchase price — roughly \$1 million more, he said — so he lost out on the condo.

Then he lost his apartment. Since the early 1970s, he had lived in a rent-stabilized apartment next door, at 40 Central Park South. By 2008 he was paying a little more than \$3,000 a month, which he figured was far less than market rates. He also had a long list of complaints — mice, roaches and worse. Once, he told a friend, he slipped and fell as a rat darted by.

He stopped paying the rent. The landlord moved to evict him and won in housing court, and won again after Mr. Wadud filed an appeal in State Supreme Court. A year ago, with his options running out, something went wrong as he took a shower.

"The whole glass door fell on me," he said, offering a passionate but convoluted explanation of how he felt he had been wronged. Calls to the landlord, Atco Properties and Management, controlled by H. Dale Hemmerdinger, the former chairman of the [Metropolitan Transportation Authority](#), were not returned.

As if his real estate fights were not wearing enough, Mr. Wadud has also been fighting

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10/18/2012 12:11 AM

Parkinson's disease. He learned the diagnosis in 1998, according to Julia Sanchez, his health care proxy. They go back a long way. They had a son in 1968, when she was 17. They never married. She said that Mr. Wadud later married and divorced twice.

Mr. Wadud has other loyalists. One is Sy Presten, a publicist who has been planting items in the columns since the days when newspapering was more like "The Front Page" than it is now. The days of Walter Winchell and Dorothy Kilgallen.

Mr. Presten went to see Mr. Wadud the other day. On the way, Mr. Presten said he had not seen a penny from Mr. Wadud in years. But he has kept beating the drums — first about the troubles at Nirvana, then Mr. Wadud's eviction from his apartment, and now about how Mr. Wadud hates being in a nursing home, any nursing home, but especially one that does not have a 212 area code.

Mr. Presten has his memories, too — memories of advising Mr. Wadud against opening two other restaurants that drained the cash from Nirvana. Now, Mr. Presten said, "One part feels sorry and the other part says, 'You deserve this, you were so obstinate in opening these other places when you had this good thing going.'"

In the tiny half-room the other day, Mr. Wadud talked about wanting to go back to Manhattan, to that different life. "But I cannot figure a way to get the place back, or the restaurant back," he said. And what with his insurance complications and financial straits, his friends worry that he may have to move to another nursing home.

"The freedom in America in a way is very good," he said, "but for some it is living hell."

Jim Dwyer is on leave.

A version of this article appeared in print on January 5, 2011, on page A16 of the New York edition.



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THIS RESTAURANT IS CLOSED Nirvana Restaurant Review: This 15th-floor aerie commands perhaps the best northerly views of Central Park. Ethnic tenting and pillows warm the rather cramped setting whose glass face and mirrored inner wall permit and amplify the visual grandeur reaching Nirvana. Founded in 1970 by Shamsheer Wadud, Nirvana is America's oldest Indian [restaurant](#). The menu is long---and pricey. We suggest sticking with either the four-course dinner or the feast for two at \$99 a person. Both meals include good house appetizers of chana bhaf (Indian chickpeas sautéed with spices and herbs); shingara (vegetable-filled turnovers); and piazis (spiced onion fritters). Entrées might be mixed vegetable or fish masala, lentil shag (lentils cooked in fresh spinach) or chicken or beef kebabs. Sides of poori breads, [sweet](#)-and-sour chutney and desserts such as payesh (sweet yogurt) and dhal (a creamy mix of rice, raisins and almonds) complete the experience.

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